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**Bidzirk, LLC Daniel Schmidt III
& Jill Patterson**

Plaintiffs

VS

Philip J Smith

Defendant

**Civil Action #
6:06-0109-HMH-WMC**

**Response to
summary judgement**

Judge Herlong,

My name is Philip Smith.

I recently was involved in legal action brought against me by Kevin Elwell for his client Bidzirk.

Thank you for ruling in my favor. Your opinion was well written with clear language that should help to prevent this severe abuse of process in the future and help to set legal precedent for the future of online journalism.

I have to admit Judge, I hate whiners. I'm not a complainer. I'm not a whiner. I do need you to know several things further about this case and about the actions of Kevin Elwell that are quite disturbing:

1) Elwell submitted a response to my summary judgement memorandum. This was not proper procedure nor was he allowed to respond in this fashion. He had submitted his arguments as requested and this is ALL he was allowed to do.

2) In this response he submitted several pre-written, pre-arranged affidavits from a court reporter Karen Ballenger of Foothills Court Reporting and a Videographer. These two affidavits were 100% identical. Each one claimed rude behavior and misconduct on my part during depositions. This is FALSE. The deposition record shows EXTREME ABUSE and misconduct on the part of Kevin Elwell - making the affidavits from the court reporter and videographer COMPLETE AND OUTRIGHT LIES.

The facts of the case were on trial, not my conduct during depositions. What is the remedy this court can give me over this action? One of us is clearly telling the truth and one of us is clearly not. I believe evidence points to the abuse of deposition and merited some of my behavior. I will also submit that Karen Ballenger DID NOT record two off record bullying comments made by Kevin Elwell. The deposition record reflects off record comments / stopping of the tape.

3) I do not feel the sanctions were severe enough to cause any consequence to the Plaintiff attorney.

4) What about contacting others that were not related to this litigation asking them to write something bad about me? (submitted with summary memorandum)

What came of asking me if I were of superior intelligence or if I had a high school diploma?

What attorney asks these questions? What court allows this abuse? What amount of time was wasted with this court over this case and the issues of abuse that were not sanctioned rather than the facts of this case?

5) The plaintiff and plaintiff attorney have resorted to search engine manipulation to try to bury your ruling and my article even though your ruling said the story could remain on my website (see pages following) REMOVE-NEGATIVELISTINGS.COM and Converseon.

6) It is obvious by the following blog entry posted on **kmelwell.com** that the sanctions were not only too lenient but that Kevin Elwell is defying your ruling. There is no apology here - it is another instance where the Plaintiff attorney is trying demoralize me and trivialize my award winning writing. He outright contradicts himself by saying I defied court orders to answer silly interrogatories and admissions, but then follows that up with YOU presiding in a hearing saying the ruling was overruled to answer the silly questions. This is an outrage that he has this sort of smugness and derelict attitude towards the court.

Evidence:

- * Found at <http://www.kmelwell.com/blog/?m=200711>
- * example gateway page
- * example skewed search results
- * examples of search engine manipulation and description

This happened back in June of 2006:

When I type the search term, **Bidzirk** into the Google search bar in Internet Explorer ... I noticed something. My article, which used to be ranked pretty high (30 days ago) under that search, now shows nothing the article isn't even ranked any more. Instead ... it has been replaced with eBay auction results from **Bidzirk**. And I say "replaced" as in it's obvious there is something afoot that is actually pushing my article out.

One of things I like about using Blogger BLOGs (which is run by Google) is the almost immediate and long term search results that it provides for my articles. One page of omitted results turned up a website called

CSENTRY.COM a subsidiary of CONVERSEON.COM.

On Converseon / CSentry I found the following:

Search Engine Reputation Management (SERMA™)

Converseon's SERMA is the first service designed specifically to help companies manage and protect their corporate and brand reputation in search engines.

With more than 600 million searches conducted daily, search engines have become a primary information resource to consumers, businesses, investors, media, regulators, employees and other key constituents. How a company is portrayed in search engines can have a powerful impact on its reputation and brand.

SERMA fuses together a unique combination of cutting edge public relations and reputation management approaches with innovative content management strategies and advanced search marketing services to "push" damaging, malicious, erroneous and negative search listings off the "visibility cliff." It accomplishes this by displacing these listings with other optimized company and third party content. SERMA also provides a solid foundation for broader search marketing initiatives to increase rankings and traffic.

For reputation and brand-aware corporations, SERMA is a critically important service to help build, protect and manage reputations in a networked environment. For a confidential discussion and analysis.

Notes:

SERMA has been designed to be fully compliant with Google and Inktomi TOS (no cloaking, spamming, doorway pages or similar) If needed, the SERMA team can provide clients with legal capabilities that are very well-versed on online trademark infringement/protest-compliant site issues. It is important to note; however, that most "protest/complaint sites"

Apparently Converseon makes software or has a system that essentially censors the internet for companies. Dell appears to be one client of theirs.

I didn't know that someone other than Google or the content author could legally do that. It seems to me nothing short of censorship and a completely blatant threat to constitutional rights.

What about paid searches? Could someone's competition pay less to this company and have their competitor's results removed? What does this say about the integrity of search engine results if they can be bought in this manner?

Compare this to:

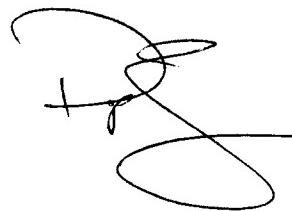
Going to a library with a Sharpie© and marking out items in the Reader's Guide or Card Catalog.

I'm amazed that there has been relatively no mention of this in the press ... I couldn't find anything in Google about software that removes Google search engine results.

How can it possibly be within the Terms Of Service to manipulate search results without being the author or distributor or having a court order?

This was attempted again two weeks ago with remove-negativelistings.com

I get \$1000.00 for a 1.5 year interruption to my life that destroyed my business, destroyed many relationships, and caused me immense financial and opportunity loss?

A handwritten signature consisting of a stylized 'J' or 'L' shape followed by a large, sweeping loop.